IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2828 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE H.K.RATHOD

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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HIRALAL KANAIYALAL MARWADI

Versus

UNION OF INDIA

Appearance:

1. Special Civil Application No. 2828 of 2001

MRS KAVITA J YADAV for Petitioner No. 1

SERVED BY RPAD - (R) for Respondent No. 1

MS PJ DAVAWALA for Respondent No. 1

MR HL JANI ASSTT GOVERNMENT PLEADER for Respondent No. 2,3-4

RULE SERVED BY DS for Respondent No. 3-4

RULE SERVED for Respondent No. 3,4

CORAM : MR.JUSTICE H.K.RATHOD

Date of decision: 12/07/2001

ORAL JUDGEMENT

#. Heard Mr.Anil S. Dave, learned advocate appearing

on behalf of the petitioner and Mr.H.L.Jani, learned AGP on behalf of the respondent Nos.2,3 and 4 and Ms.P.J.Dawawala, learned additional standing counsel for the Central Government appearing for respondent No.4 - Union of India.

#. In the present petitioner, the petitioner has challenged the order of detention dated 9th February, 2001 under Article 226 of the Constitution of India. The order of detention has been passed by the District Magistrate, Sabarkantha under Section 3[2] of the PBM Act. The present petitioner has been detained at Central Jail Baroda as Class-II detenu.

#. Though learned advocate Mr.A.S.Dave appearing on behalf of the petitioner has raised various contentions challenging the detention order but according to him, one contention is enough to vitiate the order of detention. He submitted that the contention which has been raised by the petitioner in para-6 that the petitioner has been supplied with certain bunch of papers which is running from page 1 to 23 and this bunch of compilation contains statement of the driver, panchnama, seizure order, copy of the notification dated 6-11-1980 and order of 1993, but this bunch does not contain the grounds of detention and therefore it is clearly asserted by the petitioner that the petitioner has not been supplied with grounds of detention and is supplied with order of detention passed by the District Magistrate, Sabarkantha and the order of committal to Baroda Central Jail. It also contains the copy of the order dated 20-2-2001 passed by the Shri P.G.Vyas, Deputy Secretary to Government of Gujarat, purported to have approved the order of detention. Thereafter the petitioner has applied for grounds of detention vide his request letter dated 15th March, 2001. The same is sent through jail. In this letter the detention authorities is requested to supply grounds of detention and it is also requested therein that compilation of detention papers should be given in Hindi language after due translation so that the detenu can effectively represent against the detention because the petitioner has studied in Hindi language and he is not able to clearly read Gujarati language and English language. In reply to that the respondents have given reply dated 22.3.2001 whereby the office of the respondent No.3 has rejected the request of the petitioner on the ground that the petitioner has signed previous correspondence to the office which was made in Gujarati language and therefore, the petitioner who is residing in Gujarat since number of years cannot be said to be not conversant with Gujarati language, hence his

request cannot be acceded to. In this regard, it is required to be noted that petitioner has signed this correspondence which purported to have entered into by him and if letters supplied to be detenu dated 9-8-2000 is read, it will be clear that the petitioner is not able to clearly read and clearly understand and effectively understand Gujarati language and therefore supply of detention papers in Gujarati language is improper, unconditional and against principles of natural justice and the petitioner has been denied earlier effective opportunity of making representation against the detention and therefore continued detention is illegal.

#. Learned advocate Mr.A.S.Dave has submitted that inspite of the request made by the petitioner in letter dated 15th March, 2001 which was rejected by the detaining authority on 22nd March, 2001, wherein also the request of the petitioner to supply documents in Hindi language but the detaining authority has not considered the demand of the petitioner in respect of non supply of the grounds of detention. Learned advocate Mr.A.S.Dave has placed on record the original reply received by the petitioner dated 22nd March, 2001 written by the detaining authority. The respondents authorities have not filed any reply.

#. Learned AGP Mr.H.L.Jani appearing on behalf of the respondents - detaining authorities has submitted that looking to the correspondence between the petitioner and the detaining authority, one fact is clear that the grounds of detention were not supplied to the petitioner but in the bunch of papers running from pg.1 to 23, there was no indication in the reply dated 22nd March, 2001 given by the detaining authority that the grounds of detention has been supplied to the present petitioner and subsequently the grievance has been made by the petitioner in his letter dated 15th March, 2001 that there was no answer in reply dated 22nd March, 2001 given by the detaining authority. Therefore, presumption that the grounds of detention were not supplied to the present petitioner. Therefore, he fairly submitted that in absence of the grounds of detention, it is clear case of the petitioner that the petitioner will not make any representation to the concerned authority and it ultimately violated provisions of Article 22[5] of the Constitution of India.

#. Mr.Anil Dave, learned advocate has also submitted that the grounds of detention must have to be supplied by the detaining authority and in absence of the grounds of detention, the petitioner cannot be make an effective

representation.

#. I have considered the submissions of learned advocates for the parties. This is case in which undisputed fact between the parties to the effect that along with bunch of papers running from 1 to 23, the grounds of detention hasn't been supplied to the petitioner despite of the fact though the petitioner has specifically made grievance in his letter dated 22nd March, 2001 which was replied by the detaining authority on 22nd March, 2001 but as such there was no answer given by the detaining authority that the grounds of detention has been supplied to the petitioner. The second grievance is with regard to non supply of translated copies in respect of the documents so demanded by the petitioner but such demand was rejected by the detaining authority on flimsy ground in arbitrary manner. If genuine request is made by the detenu to the detaining authority to supply documents in Hindi language because he was not knowing Gujarati language and he cannot effectively give representation after reading documents in Gujarati. Therefore, he has rightly requested to the detaining authority but such request has been arbitrarily rejected by the detaining authority. Therefore, according to my opinion, on both these grounds, not to supply grounds of detention which adversely affected the legal right of petitioner of making representation ultimately violated Article 22 [5] of the Constitution and even non supply of translated documents in Hindi and such request has been rejected by the detaining authority has also adversely affected the right of the petitioner of making an effective representation and therefore, on these two counts, the order of detention is required to be quashed and set aside.

#. In the result, the present petition is thus allowed. The order of detention dated 9th February, 2001 passed by the District Magistrate, Sabarkantha is hereby quashed and set aside. The present petitioner - detenu Hiralal Kanaiyalal Marwadi who has been detained in Central Jail Baroda is ordered to be set at liberty immediately if he is not required in any other case. Rule is made absolute with no order as to costs.

Date : 25-7-2001 [H.K.Rathod, J.]

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